

REMARKS

I. Introduction

Claims **18** and **61** are currently pending in the present application. Claims **18** and **61** are independent. The Specification stands objected to and all pending claims stand rejected. In particular:

(A) claims **18** and **61** stand rejected under 35 U.S.C. §101 as being allegedly drawn to non-statutory subject matter;

(B) claim **18** stands rejected under 35 U.S.C. §112, second paragraph, for allegedly being indefinite;

(C) claim **18** stands rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 5,559,496 (hereinafter “Dubats”) in view of U.S. Patent No. 4,245,245 (hereinafter “Matsumoto”), in further view of U.S. Patent Application Publication No. 2002/0138847 (hereinafter “Abrams”); and

(D) claim **61** stands rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Dubats in view of Matsumoto, in further view of Abrams, in yet further view of U.S. Patent No. 5,185,666 (hereinafter “Capitan”).

Upon entry of this amendment, which is respectfully requested, claims **18** and **61** will be amended solely for clarification purposes and for purposes of updating due to recent developments in case law (*i.e.*, not for purposes related to any art of record), and new claims **76-77** will be added as statutory class variants of claims **18** and **61**, respectively. No new matter is believed to be introduced by this amendment.

Applicants hereby respectfully request reexamination and reconsideration of the pending claims in light of the amendments and remarks provided herein and in accordance with 37 C.F.R. §1.112.

II. The Examiner's Objection

The Examiner objects to the Specification for describing a class of computer-readable medium that is currently deemed non-statutory (*e.g.*, carrier waves). Office Action, pg. 2, bullet 4. In as much as the claims are part of the Specification, any reference to ‘carrier waves’ in the pending claims will indeed be corrected by this paper.

Applicants respectfully note, however, that Applicants are unaware of any statute, regulation, guidance materials, or case law that would permit the Examiner to object to any other portion of the Specification (*e.g.*, the written description) for containing a reference to and/or description of subject matter that is currently believed to be non-statutory.

Accordingly, Applicants respectfully request that this ground for objection to the Specification be **withdrawn**.

III. The Examiner's Rejections

A. 35 U.S.C. §101

Claims **18** and **61** stand rejected under 35 U.S.C. §101 as being allegedly directed to non-statutory subject matter. While Applicants do not necessarily agree with this ground for rejection, based on recent developments in case law with respect to “method” claims, claims **18** and **61** are amended herein to recite the requisite structure currently required for “method” claims, rendering this ground for rejection *moot* with respect thereto.

At least for these reason, Applicants respectfully request that this §101 ground for rejection of claims **18** and **61** be **withdrawn**.

B. 35 U.S.C. §112, second paragraph

Claim **18** stands rejected under 35 U.S.C. §112, second paragraph, for allegedly being indefinite. More specifically, the Examiner states that the term “substantially”, recited by claim **18**, is a relative term that renders claims **18** indefinite.

In response to Applicants’ previous arguments regarding this ground for rejection (which are hereby incorporated by reference herein), the Examiner appears to assert that ‘relative’ terms are *per se* indefinite. Office Action, pg. 12, fourth line from the bottom. Applicants respectfully direct the Examiner’s attention to MPEP §2173.05(b), which provides detailed guidance with respect to ‘relative’ terms:

The fact that claim language, including terms of degree, may not be precise, does not automatically render the claim indefinite under 35 U.S.C. 112, second paragraph. *Seattle Box Co., v. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 221 USPQ 568 (Fed. Cir. 1984). Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification.

MPEP §2173.05(b); emphasis in original.

At least because there is no *per se* indefiniteness of relative terms and at least because the Examiner has failed to provide *any* evidence that one of ordinary skill would not understand the claimed language, the Examiner has simply and entirely failed to establish a *prima facie* case for indefiniteness, and the §112, second paragraph ground for rejection of claim 18 should therefore be **withdrawn**.

C. 35 U.S.C. §103(a) - Dubats, Matsumoto, Abrams

Claim 18 stands rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Dubats in view of Matsumoto, in further view of Abrams. Applicants traverse this ground for rejection as follows.

1. **No *Prima Facie* Case of Obviousness**

The Examiner has failed to show how every element of the claims is taught or suggested by the cited references and the Examiner has entirely failed to address or consider (much less resolve) any of the requisite factual inquiries as set forth in *Graham v. John Deere*. The Examiner has further failed to set forth a valid reason that would have led one of ordinary skill in the art to combine the cited references as suggested by the Examiner. At least for these reasons, as described in more detail hereinafter, the Examiner has failed to establish a *prima facie* case for obviousness.

a) **The reference fails to teach or suggest:** *receiving, by the central server and from the first use device, a response to the image by the first user, in which the response is one of: an indication that a human is present in the image, an indication that no human is present in the image, and an indication of uncertainty whether a human is present in the image*

Applicants respectfully assert that none of Dubats, Matsumoto, nor Abrams, alone or in combination, teaches or suggests limitations of claim 18. For example, Dubats, Matsumoto, and Abrams fail to teach or suggest *receiving, by the central server and from the first use device, a response to the image by the first user, in which the response is one of: an indication that a human is present in the image, an indication that no human is present in the image, and an indication of uncertainty whether a human is present in the image*.

The Examiner states that Dubats fails to teach or suggest the above-quoted limitation. Office Action, pg. 6, lines 6-9. Applicants agree. The Examiner goes on, however, to rely upon Matsumoto to make up for this deficiency of Dubats. Specifically, the Examiner alleges that Matsumoto describes receiving viewer responses comprising answers such as “yes”, “no”, and “maybe”.

Applicants do not disagree that Matsumoto describes receiving responses from cable TV viewers where the responses comprise short answers such as “yes”, “no”, and “maybe”. This functionality of Matsumoto, however, simply does not read on the above-quoted limitation.

Matsumoto is entirely devoid of mention or reference to any sort of surveillance applications. While Dubats at least describes a surveillance system, although devoid of any teaching or suggestion of having **people**¹ provide responses regarding whether humans are present in images, Matsumoto fails both to describe surveillance applications as well as asking people whether humans are present in images. Thus, while Matsumoto could indeed be used as evidence that the above-quoted limitation is enabled because

¹ Applicants respectfully note that the claim **MUST** be analyzed as a whole, and not piecemeal, and in doing so one realizes that the “user” in claim 18 actually requests to monitor the area – the automated “expert system” of Dubats does not involve human monitors and therefore does not require or utilize such requests.

Matsumoto shows one method via which responses from people may be received, there is simply no description in Matsumoto that reads on the above-quoted limitation.

Abrams simply fails to make up for these deficiencies of Matsumoto and Dubats.

Accordingly, at least because Dubats, Matsumoto, and Abrams fail to teach or suggest *receiving, by the central server and from the first use device, a response to the image by the first user, in which the response is one of: an indication that a human is present in the image, an indication that no human is present in the image, and an indication of uncertainty whether a human is present in the image*, Dubats, Matsumoto, and Abrams fail to render obvious claim 18.

Applicants therefore respectfully request that this §103(a) ground for rejection of claim 18 be **withdrawn**.

b) The reference fails to teach or suggest: *receiving, by the central server and from additional user devices, responses to the image by the additional users*

Applicants respectfully assert that none of Dubats, Matsumoto, nor Abrams, alone or in combination, teaches or suggests limitations of claim 18. For example, Dubats, Matsumoto, and Abrams fail to teach or suggest *receiving, by the central server and from additional user devices, responses to the image by the additional users*.

The Examiner relies upon Abrams to allegedly show a teaching of the above-quoted limitation. Specifically, the Examiner states that “[i]t is inherent [in Abrams] that a user who provides surveillance would respond if the situation dictates.” Office Action, pg. 7, lines 9-11.

Abrams is not at all directed to security or surveillance applications. Nor does Abrams describe receiving responses related to images or remote locations. Thus, it simply does not necessarily flow that the viewers in Abrams would provide responses and it is therefore **not an inherent teaching** of Abrams.

Dubats and Matsumoto simply fail to make up for this deficiency of Abrams.

Accordingly, at least because Dubats, Matsumoto, and Abrams fail to teach or suggest *receiving, by the central server and from additional user devices, responses to*

the image by the additional users, Dubats, Matsumoto, and Abrams fail to render obvious claim 18.

Applicants therefore respectfully request that this §103(a) ground for rejection of claim 18 be **withdrawn**.

c) The reference fails to teach or suggest: *evaluating, by the central server, the received responses to determine if a notification situation exists*

Applicants respectfully assert that none of Dubats, Matsumoto, nor Abrams, alone or in combination, teaches or suggests limitations of claim 18. For example, Dubats, Matsumoto, and Abrams fail to teach or suggest *evaluating, by the central server, the received responses to determine if a notification situation exists*.

The Examiner relies upon Dubats to allegedly provide a teaching of the above-quoted limitation. Specifically, the Examiner equates the above-quoted limitation with the “expert system” of Dubats. Office Action, pg. 7, lines 19-20.

The Examiner, however, grossly misinterprets the above-quoted limitation and/or the cited reference. Claim 18 recites, for example, receiving indications, from a plurality of users (e.g., **humans**) regarding whether a human is present in an image. Dubats describes a **computer** analyzing “energy projections” at a remote site to estimate the size, speed, etc. of intruding objects. **These are simply two entirely different ways of detecting security breaches.** Dubats does not utilize humans at all to detect breaches (much less a plurality of humans), and instead teaches an entirely automated “expert system” (presumably to reduce the amount of manpower needed to effect a security solution).

Neither Matsumoto nor Abrams makes up for this deficiency of Dubats.

Accordingly, at least because Dubats, Matsumoto, and Abrams fail to teach or suggest *evaluating, by the central server, the received responses to determine if a notification situation exists*, Dubats, Matsumoto, and Abrams fail to render obvious claim 18.

Applicants therefore respectfully request that this §103(a) ground for rejection of claim **18** be **withdrawn**.

d) No Reason to Combine is Evident

Even if the cited references taught or suggested each limitation of claim **18** (which Applicants maintain is not the case), the Examiner has failed to establish a *prima facie* case for obviousness for claim **18**, at least because the Examiner has provided no valid argument, much less evidence (much less substantial evidence) that there would have been **some reason** for someone of ordinary skill in the art to combine the cited references to read on the pending claims.

The only reasoning that the Examiner provides for combining the references is that it would have been obvious to combine the references “[f]or the purpose of avoiding the high error cost of a single user by using redundant users.” Office Action, pg. 7, lines 15-16 and pg. 9, lines 1-2. Applicants respectfully note that none of the cited references describes utilizing a *single* user to detect security breaches (much less by comparing images to reference images, etc.). It is therefore entirely unclear how one of ordinary skill could have possibly been motivated or otherwise have been caused to (a) modify the references to utilize a user (instead of a computerized system like in Dubats), to detect breaches in security, or (b) then feel that one user would cause too many errors, and accordingly believe that paying more users would be more beneficial to reduce errors. Neither of these premises is supported by any evidence of record. Nor do either of these premises appear valid or reasonable.

Accordingly, at least because the Examiner has (i) failed to show how every limitation of claim **18** is taught or suggested, (ii) failed to provide a proper reason to combine the cited references, and (iii) failed to support any reason to combine by evidence on the record, the Examiner has failed to set forth a *prima facie* case for obviousness of claim **18**.

Applicants therefore respectfully request that this §103(a) ground for rejection of claim **18** be **withdrawn**.

e) No Factual Inquiries Resolved

Applicants respectfully note that the factual inquiries that must be resolved to establish a *prima facie* case of obviousness, as set forth in *Graham v. John Deere*, may be summarized as follows: (i) determine the scope and content of the prior art; (ii) ascertain the differences between the prior art and the claims at issue; (iii) resolve the level of ordinary skill in the pertinent art; (iv) and consider objective evidence (e.g., secondary considerations).

Applicants further respectfully note that the Examiner has provided no evidence in support of a *prima facie* case for obviousness, nor has the Examiner resolved any of the factual determinations required by *Graham v. John Deere*. Within such an evidentiary vacuum, the Examiner's unsupported conclusory statement that it would have been obvious to combine Dubats, Matsumoto, and Abrams to achieve the claimed embodiments, is entirely meaningless.

At least for these reasons, the Examiner has entirely failed to establish a *prima facie* case for obviousness, and the §103(a) ground for rejection of claim **18** should therefore be **withdrawn**.

D. 35 U.S.C. §103(a) - Dubats, Matsumoto, Abrams, Capitant

Claim **61** stands rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Dubats in view of Matsumoto, in further view of Abrams, in yet further view of Capitant. Applicants traverse this ground for rejection as follows.

1. No *Prima Facie* Case of Obviousness

The Examiner has failed to show how every element of the claims is taught or suggested by the cited references and the Examiner has entirely failed to address or consider (much less resolve) any of the requisite factual inquiries as set forth in *Graham v. John Deere*. The Examiner has further failed to set forth a valid reason that would have led one of ordinary skill in the art to combine the cited references as suggested by the

Examiner. At least for these reasons, as described in more detail hereinafter, the Examiner has failed to establish a *prima facie* case for obviousness.

a) The reference fails to teach or suggest: *requesting, by the central server, that each remote viewer of the plurality of remote viewers provide an indication of whether the image of the object matches a reference image of a particular object*

Applicants respectfully assert that none of Dubats, Matsumoto, nor Abrams, alone or in combination, teaches or suggests limitations of claim 61. For example, Dubats, Matsumoto, and Abrams fail to teach or suggest *requesting, by the central server, that each remote viewer of the plurality of remote viewers provide an indication of whether the image of the object matches a reference image of a particular object*.

The Examiner relies on Dubats and the “expert system” of Dubats as being equivalent to a plurality of remote viewers as claimed. Office Action. Pg. 10, lines 13-16. As describe herein, **this equivalency is simply invalid**. Nowhere does Dubats “request” that the expert system perform any function – it is a computer system that is programmed to automatically perform the given function. In contrast, and read in light of the Specification which defines and provides many examples of “remote viewers” (e.g., as being humans), the currently claimed embodiment of claim 61 recites taking the affirmative step of “requesting” that the “remote viewers” perform a task. Dubats simply does not contemplate nor provide written description of such a concept.

Capitant, Matsumoto, and Abrams all fail to make up for this deficiency of Dubats.

Accordingly, at least because Dubats, Matsumoto, and Abrams fail to teach or suggest *requesting, by the central server, that each remote viewer of the plurality of remote viewers provide an indication of whether the image of the object matches a reference image of a particular object*, Dubats, Matsumoto, and Abrams fail to render obvious claim 61.

Applicants therefore respectfully request that this §103(a) ground for rejection of claim **61** be **withdrawn**.

b) No Reason to Combine is Evident

Even if the cited references taught or suggested each limitation of claim **61** (which Applicants maintain is not the case), the Examiner has failed to establish a *prima facie* case for obviousness for claim **61**, at least because the Examiner has provided no valid argument, much less evidence (much less substantial evidence) that there would have been some reason for someone of ordinary skill in the art to combine the cited references to read on the pending claims.

The only reasoning that the Examiner provides for combining the references is that it would have been obvious to combine the references “[f]or the purpose of avoiding the high error cost of a single user by using redundant users.” Office Action, pg. 7, lines 15-16 and pg. 9, lines 1-2. Applicants respectfully note that none of the cited references describes utilizing a *single* user to detect security breaches (much less by comparing images to reference images, etc.). It is therefore entirely unclear how one of ordinary skill could have possibly been motivated or otherwise have been caused to (a) modify the references to utilize a user (instead of a computerized system like in Dubats), to detect breaches in security, or (b) then feel that one user would cause too many errors, and accordingly believe that paying more users would be more beneficial to reduce errors. Neither of these premises is supported by any evidence of record. Nor do either of these premises appear valid or reasonable.

Accordingly, at least because the Examiner has (i) failed to show how every limitation of claim **61** is taught or suggested, (ii) failed to provide a proper reason to combine the cited references, and (iii) failed to support any reason to combine by evidence on the record, the Examiner has failed to set forth a *prima facie* case for obviousness of claim **61**.

Applicants therefore respectfully request that this §103(a) ground for rejection of claim **61** be **withdrawn**.

c) No Factual Inquiries Resolved

Applicants respectfully note that the factual inquiries that must be resolved to establish a *prima facie* case of obviousness, as set forth in *Graham v. John Deere*, may be summarized as follows: (i) determine the scope and content of the prior art; (ii) ascertain the differences between the prior art and the claims at issue; (iii) resolve the level of ordinary skill in the pertinent art; (iv) and consider objective evidence (*e.g.*, secondary considerations).

Applicants further respectfully note that the Examiner has provided no evidence in support of a *prima facie* case for obviousness, nor has the Examiner resolved any of the factual determinations required by *Graham v. John Deere*. Within such an evidentiary vacuum, the Examiner's unsupported conclusory statement that it would have been obvious to combine Dubats, Matsumoto, Abrams, and Capitant to achieve the claimed embodiments, is entirely meaningless.

At least for these reasons, the Examiner has entirely failed to establish a *prima facie* case for obviousness, and the §103(a) ground for rejection of claim **61** should therefore be **withdrawn**.

IV. New Claims

New independent claims **76-77** are statutory class variants of pending claims **18** and **61** respectively, and are accordingly believed to be patentable over the cited references at least for the reasons otherwise presented herein.

V. Conclusion

At least for the foregoing reasons, it is submitted that all pending claims are now in condition for allowance, *or in better form for appeal*, and the Examiner's early re-examination and reconsideration are respectfully requested. Applicants' silence with respect to any comments made in the Office Action does not imply agreement with those comments.

Alternatively, if there remain any questions regarding the present application, the Examiner is cordially requested to contact Carson C.K. Fincham at telephone number (203) 461-7017 or via e-mail at cfincham@walkerdigital.com, upon the Examiner's convenience.

VI. Fees and Petition for Extension of Time to Respond

Applicants hereby petition for a **one-month extension** of time and authorize the charge of **\$130.00** to our Deposit Account No. 50-0271. Please charge any additional fees that may be required for this Response, or credit any overpayment to Deposit Account No. 50-0271.

Furthermore, should any other extension of time be required or any other fee be due, please grant any extension of time which may be required to make this Amendment timely, and please charge any required fee to Deposit Account No. 50-0271.

Respectfully submitted,

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Date

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